

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JAMES BACON
Plaintiff,
v.
ALLIE THURMAN *et al.*
Defendants

Case No. C06-5185RBL

**ORDER SENDING PLAINTIFF'S
REQUEST FOR COUNSEL TO THE
SCREENING COMMITTEE FOR
CONSIDERATION**

This 42 U.S.C. § 1983 Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local Magistrates' Rules MJR 1, MJR 3, and MJR 4. Before the court is plaintiff's motion asking appointment of counsel (Dkt. # 34). This case is in an unusual procedural posture. No dispositive motions were filed by either party. The deadline for filing such a motion was February 3, 2007 (Dkt. # 25). Thus, it appears this action is going to trial.

In considering plaintiff's motion for counsel the court notes there is a standard for appointment of counsel in the Ninth Circuit. There is no right to have counsel appointed in cases brought under 42 U.S.C. § 1983. Although the court, under 28 U.S.C. § 1915(d), can request counsel to represent a party proceeding *in forma pauperis*, the court may do so only in exceptional

ORDER

1 circumstances. Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986); Franklin v. Murphy,
2 745 F.2d 1221, 1236 (9th Cir. 1984); Aldabe v. Aldabe, 616 F.2d 1089 (9th Cir. 1980). A finding of
3 exceptional circumstances requires an evaluation of both the likelihood of success on the merits and
4 the ability of the plaintiff to articulate his claims *pro se* in light of the complexity of the legal issues
5 involved. Wilborn, 789 F.2d at 1331.

6 Here, plaintiff claims an Eighth Amendment violation as a result of force used against him
7 when he was housed in a juvenile facility. He alleges permanent physical injury (Dkt. # 4). The
8 defendants have not responded other than to file an answer (Dkt. # 23). The answer amounts to a
9 general denial.

10 The court orders this case be sent to the screening committee for consideration of plaintiff's
11 request for appointment of counsel. The committee will report back to this court.

12 The Clerk is directed to send a copy of this Order to plaintiff and counsel for defendants and
13 refer this case to the screening committee.

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DATED this 27 day of April 2007.

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/S/ J. Kelley Arnold

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J. Kelley Arnold

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United States Magistrate Judge

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ORDER